

23 VAC 10-360. LITTER TAX REGULATIONS

~~23 VAC 10-360-10. Litter tax.~~

~~A. Generally. Section 58.1-1701 of the "Virginia Litter Tax Act," Chapter 17 of Title 58.1 of the Code of Virginia, levies an annual litter tax upon every "person" in the state engaged in business as a manufacturer, wholesaler, distributor or retailer of certain enumerated "products." The rate of this tax is \$10 per "establishment" from which such business is conducted. An additional annual tax of \$15 per establishment is levied on manufacturers, wholesalers, distributors and retailers of groceries, soft drinks, carbonated waters, beer, or other malt beverages. For purposes of this regulation, the taxable year is the calendar year of January 1 through December 31, previous to the filing date of May 1. The tax is collected by the Department of Taxation.~~

~~B. Who must file.~~

~~1. Imposition. The tax does not apply to consumers. The tax is imposed on every "person" in Virginia engaged in business on January 1 of the taxable year as a manufacturer, wholesaler, distributor or retailer of certain enumerated products. A "person" engaged in business on January 1 of the taxable year is liable for the tax on every establishment in operation on January 1. The tax is not imposed for the taxable year on any "person" who has not established a business on January 1. However, businesses operating annually on a seasonal basis are liable for the tax even though they are not in actual operation on January 1.~~

~~With respect to vendors who sell products through coin-operated machines, a person engaged in business as a "retailer" does not include a person who sells through such machines incidentally to any other business or service.~~

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~~2. Person defined. "Person" means any natural person, corporation, partnership, association, administrator, fiduciary, representative, or group of individuals or entities of any kind operating the business. "Person" includes partnerships, but not partners; subchapter S corporations, but not shareholders; corporations, but not stockholders; and associations, but not members. "Person" does not include any government or government agency.~~

~~Every person, as defined herein, must file who manufactures, wholesales, distributes or retails any of the products enumerated in the 15 categories at §58.1-1708 of the Code of Virginia and subdivision 4 of this subsection. Liability on a retailer is imposed whether or not sales are made at established places of business, door-to-door, by party plan, or by any other direct sales method. However, liability is not imposed on one who is not engaged in selling at retail but merely takes orders and/or delivers on behalf of a retailer.~~

~~3. Establishment defined. "Establishment" means every separate location from which the "person's" business is conducted in Virginia on January 1 of the taxable year. Every manufacturing plant, and every place from which wholesaling, distribution, or retailing is actually conducted is an "establishment." A main office that is at a separate location from the place of actual manufacturing, wholesaling, distribution or retailing is not a separate establishment.~~

~~For any "person" without a location from which business is conducted, "establishment" means every location at which products are stored, kept or assembled, or if there is no such location, then where the business records are normally kept.~~

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~~For purposes of this regulation, every vending machine is not a separate establishment. Any person engaged in the business of selling any of the products enumerated in this subsection through the use of coin-operated vending machines must pay the annual litter taxes only with respect to each location from which such products are stored, kept, or assembled for supplying such vending machines. However, storing, keeping or assembling supplies at or near individual machines does not create an "establishment."~~

~~Example 1~~

~~A retailer of products included in subdivision 4 of this subsection has 250 separate business locations throughout Virginia in operation on January 1 of the taxable year. He is liable for the tax computed on the 250 locations.~~

~~Example 2~~

~~On January 1, a business owns 50 vehicles from which sandwiches, coffee, etc., are sold. It has one central office/warehouse in Virginia. It is not liable for the tax computed on each vehicle but on the one office/warehouse.~~

~~Example 3~~

~~A farmer is in a seasonal business of selling produce from two trucks and does not have a location at which products are stored, kept or assembled. He keeps his business records along with his personal records in his home. He is liable for the tax, therefore, computed only on one "establishment."~~

~~Example 4~~

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~~A manufacturer of a product included in subdivision 4 of this subsection has one plant location ("establishment") on January 1, but adds a second plant in July. The \$10 tax is due the following May 1 on the first plant only.~~

~~Example 5~~

~~A soft drink manufacturer places and operates vending machines in other retailers' establishments. The manufacturer is liable for the \$10 litter tax and the \$15 additional tax on each location where vending supplies are kept, stored, or assembled, and not on each vending machine placed. The retailer is not liable for the tax on the vending machines placed and operated by the manufacturer.~~

~~Example 6~~

~~A gasoline retailer owns 50 stations in Virginia. Each station sells certain products (not through vending machines) that makes it liable for the \$10 tax per station. In addition, each station sells beverages through vending machines. However, since a vending machine is not a separate establishment, the retailer is not liable for any additional \$15 tax.~~

~~Example 7~~

~~A newspaper publisher has one main plant and five "satellite" offices through the state where reporters have access to phones and office space. These satellite offices are not separate establishments. The newspaper would pay one \$10 litter tax.~~

~~4. Products defined. For purposes of this chapter, the products enumerated at §58.1-1708 of the Code of Virginia are defined as follows:~~

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- a. ~~"Food for human or pet consumption" means any substance, except drugs, the chief general use of which is for human or pet nourishment, including beverages, candy, chewing gum, and condiments. It includes sales of meals, snacks, lunches, or other food, for on- or off-premises consumption, by restaurants, drive-ins, snack bars, concessions, roadside stands and taverns, or through vending machines. "Drugs" means any chemical compound, whether or not sold on prescription, that may be used or administered to humans or animals as an aid in diagnosis, treatment or prevention of disease or abnormal condition; for relief of pain or suffering; or to control or improve any physiologic or pathologic condition.~~
- b. ~~"Groceries" means all foodstuffs, beverages, meats, produce, dairy products, and household supplies, of the type sold by grocers. "Household supplies" does not include dishes, cooking utensils and reusable food containers.~~
- c. ~~"Cigarettes and tobacco products" means all products and articles containing tobacco.~~
- d. ~~"Soft drinks and carbonated waters" means all beverages consisting in part of soda water.~~
- e. ~~"Beer and other malt beverages" means any beverage, including ale, porter, and stout, obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water.~~
- f. ~~"Wine" means any beverage, including cider, obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, either with or without additional sugar, carbonated or otherwise.~~

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~~g. "Newspapers and magazines" means all daily and periodical publications, excluding publications issued generally for the person's employees or membership only.~~

~~h. "Paper products and household paper" means materials or substances made into sheets or leaves from organic or synthetic fibrous material, including products or articles made from such sheets or leaves.~~

~~i. "Glass containers" means articles made wholly or in substantial part of processed silicates which are used to package any of the products enumerated in this subsection.~~

~~j. "Metal containers" means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and which are used to package any products enumerated in this subsection.~~

~~k. "Plastic or fiber containers" made of synthetic material means articles which are used to package any of the products enumerated in this subsection, and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives or polymers, or made by synthesis of fibrous materials with adhesives, polymers, waxes, resins or other materials.~~

~~l. "Cleaning agents and toiletries" means all soaps, detergents, solvents or other cleaning substances used for cleaning buildings, places, persons, animals or other things and all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming, but not including "drugs" defined in subdivision 4 a of this subsection.~~

~~m. "Nondrug drugstore sundry products" means all products except drugs, of the type sold by persons in a place of business selling drugs, that are used for cosmetic,~~

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~~personal hygiene, grooming, or other personal care purposes. Drugs are defined in subdivision 4 a of this subsection.~~

~~n. "Distilled spirits" means all beverages defined as "spirits" under Chapter 1, "The Alcoholic Beverage Control Act," of Title 4.1 of the Code of Virginia.~~

~~e. "Motor vehicle parts" means every component, accessory, or part of a "motor vehicle" defined by Chapter 1 of Title 46.2, "Motor Vehicles," of the Code of Virginia. ("Motor vehicle" as defined in Title 46.2 excludes bicycles and mopeds as well as any self-propelled device that is not or may not be transported upon a highway.) A motor vehicle itself is not considered to be a motor vehicle part. Oil and lubricants are not considered to be motor vehicle parts.~~

~~C. Rate of tax.~~

~~1. Ten-dollar tax. The tax is at the rate of \$10 per Virginia establishment from which business is conducted as a manufacturer, wholesaler, distributor or retailer of products listed in subsection B of this section. (See the definition of "establishment" at subdivision B 3 of this section.)~~

~~2. Fifteen-dollar tax. In addition to the ten-dollar tax, every person who conducts business as a manufacturer, wholesaler, distributor, or retailer of groceries, soft drinks, carbonated waters, or beer or other malt beverages, must pay a \$15 tax per "establishment." (See the definition of "establishment" at subdivision B 3 of this section.)~~

~~D. Due date of return. A Virginia Department of Taxation Form 200 must be completed and filed and the tax due paid by every liable manufacturer, wholesaler, distributor or retailer, by midnight of May 1, for the taxable year, i.e., the previous calendar year. This~~

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~~due date applies whether or not the taxpayer is a fiscal or calendar year filer for income tax purposes. Timely filing may be effected by having a return postmarked by such time. No extension of time to file or pay will be granted.~~

~~E. Penalty. If payment of all tax due is not made by May 1, a penalty equal to 100% of the amount of tax due must be added to the tax. The penalty may be waived by the Tax Commissioner only if there is good cause for the failure to pay on time. Requests for waiver of penalty must be made in writing to the Tax Commissioner and must include all pertinent facts to support the request.~~

~~F. Bad checks. Section 58.1-12 of the Code of Virginia, and any regulation issued thereunder, applies to tendering a bad check for taxes due under the Litter Tax Act.~~

~~G. Interest. The taxpayer may pay the tax and penalty on or before June 1 without interest accruing. Interest will accrue at the current rate established under §58.1-1812 of the Code of Virginia on the unpaid amount of tax and penalty from June 1 until the time of payment. Interest may not be waived and will accrue whether or not any penalty is waived.~~

~~H. Refunds. The provisions of Chapter 18 of Title 58.1 of the Code of Virginia, and any regulation issued thereunder, pertaining to procedures for filing amended returns, will apply to taxes paid under the Litter Tax Act.~~

~~I. Assessments by the department. Section 58.1-1812 of the Code of Virginia, and any regulation issued thereunder, applies to assessment of Litter Tax by the Department of Taxation.~~

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~~J. Erroneous assessments. The provisions of Chapter 18 of Title 58.1 of the Code of Virginia, pertaining to procedures for application for relief from erroneous assessments, and any regulation issued thereunder, will apply to taxes assessed under the Litter Tax Act.~~